28. Both the Bureau and Adams conclude that there was a greater than 50% transfer of control by attributing the ownership of STV Reading, Inc.'s interest of almost 5% in Reading to Parker rather than to Dr. Aurandt. However, the record evidence shows that ownership of the STV Reading, Inc. stock should be attributed to Dr. Aurandt. (For ease of reference, the chart that was proffered as Reading Ex. 17, which is based on the information in Adams Ex. 21, Adams Ex. 24 and Adams Ex. 28, follows. The record, Tr. 953:14-969:23, shows that STV Reading, Inc.'s ownership is the central issue of debate here.)

Reading, was made when Reading's counsel had just been retained for this case and was corrected in a subsequent pleading. See Reading's Opposition to Motion to Enlarge, filed November 19, 1999.

Reading Broadcasting, Inc. - Stock Ownership Comparison

I. Shareholders of Record Previously Approved By The Commission[1]

Name of Shareholder	Form 316 (08-14-91) Proposed	Shares Issued 10-15-91		Form 315 (11-13-91) Proposed		Shares Issued 12-31-91 correcting certificates issued 10-15-91		Post Transfer Report (4-16-92)
	Shares	Cert No.	Shares	Shares (based on %)	%	Cert No.	Shares	Shares
Henry N. Aurandt	-	-	-	58,554	13.98%[2]			(57,141)[3] 6,331
Henry N. & Helen Aurandt	74,678	43	17,537	16,128	3.85%	2A	17,537	17,537
Henry Aurandt, Trustee	-	-	-	-	-	22A	6,331	-
STV Reading, Inc.	-	40	17,674	17,674	4.22%	29A	17,674	17,674
Robert A. Denby	19,922	2	19,922	19,922	4.75%	3A	19,922	19,922
Irvin Cohen	12,067	3	12,067	12,067	2.88%	4A	12,067	12,067
Roger & L. Carole Longenecker	15,413	4	15,413	15,413	3.68%	5A	15,413	15,413
Ralph Tietbohl	14,683	5	14,683	14,683	3.50%	6A	12,874	14,683
Tietbohl Retirement Plan	-	-	-	-	-	23A	1,809	-
Patricia Verbinski	16,045	6	16,045	16,045	3.83%	7A	16,045	16,045
Robert and Fay Clymer	5,943	7	5,943	5,943	1.42%	8A	5,943	5,943
Sergio and Penelope Proserpi	12,003	8	12,003	12,003	2.86%	9A	10,194	12,003
Proserpi Profit-sharing Plan	-	-	-	-	-	24A	1,809	-
Larry A./ Alison A. Rotenberg	5,038	9	5,038	5,038	1.20%	12A	2,339	5,039
Alison A. Rotenberg	-	-	-	-	-	10A	1,169	-
Larry A. Rotenberg	-	-	-	-	-	11A	1,169	-
Larry Rotenberg UGMA for D.A. Rotenberg	-	-	-	-	-	25A	362	-
David and Barbara Mann	9,977	10	9,977	9,977	2.38%	13A	9,977	9,977
Edward and Noni Fischer	12,121	13	12,121	12,121	2.89%	14A	12,121	12,121
Bernard R. Gerber	3,424	14	3,424	3,424	0.82%	15A	2,338	3,424
Gerber Retirement Plan	-	-	-	-	-	26A	1,086	-
Jack and Nancy Linton	3,424	15	3,424	3,424	0.82%	16A	2,338	3,424
Linton Retirement Plan	-	-	-	-	-	27A	1,086	-
Catherine Morrow	5,333	16	5,333	5,333	1.27%	17A	5,333	5,333
Donald and Mary Lu Stoudt	1,350	17	1,350	1,350	0.32%	18A	1,350	1,350
Joanne V. (Davis) Van Roden	3,507	19	3,507	3,507	0.84%	19A	3,507	3,507
Albert Boscov	3,243	11	3,243	3,243	0.77%	20A	3,243	3,243
John and Jill Bower	8,014	12	8,014	8,014	1.91%	21A	8,014	8,014
Subtotal of Shares Held by Shareholders of record previously approved by the Commission	226,185		186,718	243,863			193,050	(243,860) 193,050
% Ownership by Shareholders Previously Approved	56.68%		51.6%	58.2%[1]	58.2%[2]		52.4%	(58.2%) 52.4%

[1] Stock is held by persons whose qualifications to be Commission licensees have been approved of or "passed upon" in connection with the Commission's approval of a long form application wherein that person was disclosed. *See Metromedia Inc.*, 98 FCC 2d 300, 305 (¶8) (1984).

[2] There were pending claims against Aurandt's stock which were estimated, at that time, to represent 13.98% of Reading's outstanding stock.

[3] 50,812 shares of Aurandt's stock were not issued to Aurandt due to pending claims.

II. Shareholders of Record Not Previously Approved By the Commission

Name of Shareholder	Form 316 (08-14-91) Proposed	Shares Issued 10-15-91		Form 315 (11-13-91) Proposed		Shares Issued 12-31-91 correcting certificates issued 10-15-91		Post Transfer Report (4-16-92)
	Shares	Cert No.	Shares	Shares (based on %)	%	Cert No.	Shares	Shares
David L. Hyman	2,071	18	2,071	2,071	0.49%	28A	2,071	2,071
Meyer Weiner	3,618	-	-	-	-	-	-	-
George Pavloff	6,812	20	6,812	6,812	1.63%	30A	6,812	6,812
Ben Bowers	6,335	21	6,335	6,335	1.51%	31A	6,335	6,335
Harvey L. Massey	4,905	22	4,905	4,905	1.17%	32A	4,905	4,905
Al W. Busby	2,725	23	2,725	2,725	0.65%	33A	2,725	2,725
Fred Hollingsworth	2,725	24	2,725	2,725	0.65%	34A	2,725	2,725
Carol Anne Kasko	2,725	*	2,725	2,725	0.65%	35A	2,725	2,725
Ethlyn Muir	2,725	26	2,725	2,725	0.65%	36A	2,725	2,725
Hugh Morris	2,725	27	2,725	2,725	0.65%	37A	2,725	2,725
Paul Pavloff	2,725	28	2,725	2,725	0.65%	38A	2,725	2,725
Harry Brueckman	1,362	29	1,362	1,362	0.33%	39A	1,362	1,362
John H. Gallen	1,362	30	1,362	1,362	0.33%	40A	1,362	1,362
Helen Kirkpatrick	1,362	31	1,362	1,362	0.33%	41A	1,362	1,362
Barbara MacCallum	1,362	32	1,362	1,362	0.33%	42A	1,362	1,362
Martin Muir	1,362	33	1,362	1,362	0.33%	43A	1,362	1,362
Mark Norris	1,362	34	1,362	1,362	0.33%	44A	1,362	1,362
Richard M. Palmer, Jr.	1,362	35	1,362	1,362	0.33%	45A	1,362	1,362
Stella Pavloff-Bull	1,362	36	1,362	1,362	0.33%	46A	1,362	1,362
Adolpho E. Rodriguez	1,362	37	1,362	1,362	0.33%	47A	1,362	1,362
Martin Wohlbruck	1,362	38	1,362	1,362	0.33%	48A	1,362	1,362
Dolores Gallen	681	39	681	681	0.16%	49A	681	681
Micheal Parker	0	-	0	0	-	-	0	0
Partel, Inc.	118,467	41/42	124,401	124,401	29.69 %	1A	124,402	124,401
Subtotal of Shares Held by Shareholders of Record Not Previously Approved by the Commission	172,859		175,175	175,175	41.8%		175,176	175,175
Total Shares Issued	399,044		361,893	419,038	100.0 %		368,226	(419,035) 368,225

* The stock register for Carol Anne Kasko was not completed correctly and therefore, the original share certificate number is unknown.

29. The Bureau summarizes the evidence on this point in paragraph 107, p. 51 of the Bureau's Brief:

> In addition to withholding shares from Dr. Aurandt, Mr. Parker also issued 17,674 shares of RBI to an entity called STV Reading, Inc. ("STVR"). Adams Ex. 24; Tr. 809-10, 975. Although Dr. Aurandt was the holder of record of some 90% of STVR voting shares, Mr. Parker did not transmit the RBI shares for STVR to Dr. Aurandt. Rather, Mr. Parker issued the RBI stock destined for STVR to himself. Mr. Parker justified this action based on proxies he had previously received in connection with STVR, which resulted in his election as STVR president. Tr. 970, 977. All of the STVR proxies relied upon by Mr. Parker had come from four persons who had not previously held an ownership interest in RBI. In fact, they were the same four individuals who had secured the judgment and garnishment against Dr. Aurandt discussed above. Adams Ex. 28; Tr. 972, 975-76. RBI shareholders then opposed to Mr. Parker understood that the new RBI Shares "were allocated by Mr. Parker in a fashion to skew the voting power of the shareholders of [RBI] in favor of Partel, Inc. and against the former stockholders of [RBI]." Adams Ex. 13, pp. 72-73.

30. This analysis is plainly incorrect. Parker's testimony, Tr. 970, 977, does not show that Parker issued the STV Reading, Inc. stock to himself. Rather, Parker's testimony shows the following:

a. Parker issued the STV Reading, Inc. stock to Aurandt per Aurandt's instructions. [Parker Testimony, Tr. 910:7-22, 975:6-21, 977:13-23]

b. Aurandt owned approximately 90% of STV Reading, Inc.'s stock when Parker issued 17,674 shares of Reading's stock to STV Reading, Inc. [Adams Ex. 24, certificate 29A (showing issuance of 17,674 shares on 10-15-91 and corrected certificate for same number on 12-31-91); Parker Testimony, Tr. 910:18-22, 977:13-23, 985:8-986:19]

c. At the time, Parker knew that Aurandt owned approximately 90% of STV Reading, Inc. but mistakenly thought that Aurandt had only issued stock certificates representing 10% of the company to his creditors. [Parker Testimony, Tr. 970:11-973:7, 977:6-978:13]

d. Parker obtained a proxy from the 10% stockholders of STV Reading, Inc., held a meeting and appointed himself President of STV Reading, Inc. for

purposes of voting the stock of STV Reading, Inc. as a temporary tactical measure against Aurandt. [Parker Testimony, Tr. 977:6-978:13]

e. STV Reading, Inc.'s 17,674 shares represented 4.9% of Reading's 361,893 shares originally issued on October 15, 1991 and 4.8% of Reading's 368,226 corrected shares issued on December 31, 1991. [Adams Ex. 24 (corrections shown on certificates 1A-21A and 23A-50A; new issuance shown on certificates 1A and 22A)]

f. Parker voted the stock of STV Reading, Inc. (as President of STV Reading, Inc.) as part of 249,311 votes cast for a majority of the Reading board of directions approved at Reading's stockholder meeting on October 30, 1991. [Adams Ex. 13 at 38A, 43A, 76A; Parker Testimony, Tr. 636:9-25, 977:6-978:13]

g. Parker again voted the stock of STV Reading, Inc. (as President of STV Reading, Inc.) as part of 240,222 votes cast unanimously for reappointment of the Reading board of directors approved at Reading's stockholder meeting on February 4, 1992. [Adams Ex. 13 at 74, 99-105; Parker Testimony, Tr. 636:9-25, 977:6-978:13]

h. In August, 1992, Parker, Aurandt (signing both for himself and for STV Reading, Inc.) and related parties settled their differences in a Settlement Agreement which, among other things, (i) ratified the actions taken at the stockholder meetings described above, (ii) released Aurandt and STV Reading, Inc. from all claims of Reading, (iii) released Parker and Reading of all claims by STV Reading, Inc., (iv) ratified the votes of STV Reading, Inc. stock described above, and (v) provided for Parker's resignation as President of STV Reading, Inc. effective the day before his purported election to that position.. [Adams Ex. 27 at 1, 20-21, 24-26; Parker Testimony, Tr. 803:5-804:6, 970:11-973:15]

31. Under 47 C.F.R. § 73.3555 Note 2(d), the STV Reading, Inc. stock was always attributable to Dr. Aurandt, not to Parker.[9] The issuance of a proxy does

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[9] Adams appears to contend that the STV Reading, Inc. stock could be treated within the group of previously-approved stockholders only if Reading had filed a Form 301, 314 or 315 application specifically listed STV Reading, Inc. as a proposed stockholder. Adams Brief at 105-06. Adams cites no authority for this proposition, presumably because none exists. 47 C.F.R. § 73.3555 Note 2(d) makes it clear that the stock of STV Reading, Inc. is attributable to Dr. Aurandt, who was a previously-approved stockholder, if Dr. Aurandt owned more than 50% of the stock of STV

(footnote continues)

not transfer de jure ownership and is not deemed to be a de jure transfer of ownership under the Commission's attribution rules. Moreover, the record evidence shows that the Bureau errs in claiming that Parker misappropriated the Reading stock issued in the name of STV Reading, Inc. Had there been such a misappropriation, it would have been addressed in the Settlement Agreement with Aurandt. (Given that Aurandt signed the Settlement Agreement on behalf of STV Reading, Inc., there is no question that he controlled the company at that time.) The Settlement Agreement corroborates Parker's testimony that Parker did not misappropriate the stock, but rather issued the stock to Aurandt but tried to vote the stock through a corporate technicality that was subsequently voided through the Settlement Agreement.

32. Parker's actions also did not cause a de facto transfer of control of Reading. The corporate records confirm Parker's testimony that the 17,674 shares of STV Reading, Inc. stock were irrelevant to the stockholder votes on October 30, 1991 and February 4, 1992. [See Adams Ex. 13 at 38A and 76A (out of 361,893 shares outstanding, at least 249,311 shares (69%) were represented at the October 30, 1991 meeting and voted for the Reading Board of Directors nominated by Parker) and at 74, 99-105 (out of 368,226 shares outstanding, 240,222 (65%) were represented at the February 4, 1992 meeting and voted for reappointment of the Reading Board of Directors nominated by Parker); Parker Testimony, Tr. 678-80]

Reading, Inc. Adams cites no contrary evidence showing that Dr. Aurandt did not own approximately 90% of the stock of STV Reading, Inc.

The outcomes would not have been different had the STV Reading, Inc. stock been voted against the proposals. [See Parker Testimony, Tr. 667:10-12 (new board elected "overwhelmingly")] Instead of a de facto transfer of control, the votes were an exercise of existing control by the stockholders of Reading.

33. Finally, the Bureau's quote about Parker allocating the shares of Reading in a skewed manner does not appear at the cited reference. [See Adams Ex. 13 at 72-73] Even if such a quote does exist, it does not refer specifically to STV Reading, Inc. and it may have nothing to do with STV Reading, Inc. The record shows that there was a dispute over how much Reading stock was to be issued to Dr. Aurandt. [Adams Ex. 15 at 72-73; Adams Ex. 28 at 6 and Ex. 4; Parker Testimony, Tr. 889:23-893:2] The quote, if it exists, may have to do with that dispute rather than STV Reading, Inc.

6. Reading Was Not Required To Disclose The Issuance of Stock In October 1991.

34. Both Adams and the Bureau take Reading to task for not disclosing in its Form 315 application, filed on November 13, 1991, that Reading had issued stock on October 15, 1991. Bureau Brief at 53-54, 79-80; Adams Brief at 102, 233. However, there was no affirmative obligation to do so, either in the form 315 application or in the Commission's rules.

35. A corporate licensee may undergo less than a 50% change in ownership without Commission approval or notification, except for the requirement to note the changes in the licensee's next annual ownership report. However, as a debtor-in

possession, Reading was required to seek Commission approval for transfer of control from Reading Broadcasting, Inc., debtor-in-possession, to Reading Broadcasting, Inc. as a new, post-bankruptcy entity. In that process, a Form 316 application would be used for less than a 50% change in stockholders and a Form 315 application would be used for a 50% or greater change in stockholders. Issuance of the new stock was one of a number of steps required for a consummation of Reading's plan of reorganization. [Parker Testimony, Tr. 882:20-887:8]

36. Reading originally filed a Form 316 application on August 14, 1991. [Adams Ex. 21] That application included the required showing of current and proposed stock ownership for purposes of demonstrating that there would not be a 50% or greater transfer of control, requiring a long-form application. [Adams Ex. 21, Ex. 2] That Form 316 application was granted on August 27, 1991. [Adams Ex. 22] However, after that application was granted, Reading was served with a garnishment order and writ of execution attaching to Dr. Aurandt's stock in Reading. [Reading Ex. 15] The order and writ were served on Reading on October 10 and/or 11, 1991. [Reading Ex. 15; Parker Testimony, Tr. 888:1 – 889:15][10]

37. On October 15, 1991, Parker issued shares of stock in Reading largely in accordance with the proposed list of stock ownership set forth in the Form 316

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[10] Adams attempts to argue that Reading was aware of the garnishment earlier, citing the minutes of a July 31, 1991 directors' meeting. [Adams Ex. 15 at 73, cited at Adams Brief at 111 n. 52] However, Parker testified that those minutes were not referring to the garnishment issue. [Parker Testimony, Tr. 889:17 – 893:2]

application. [Compare Adams Ex. 21 with Adams Ex. 24] This action was taken in accordance with a corporate resolution authorizing and directing the officers of the company to execute and implement the plan of reorganization [Reading Ex. 16; Parker Testimony, Tr. 904:11 – 905:15]

38. However, there were two variances in the issuance of stock certificates. First, Parker was issued an additional amount of approximately 6.25% of the outstanding stock in Reading that was subject to an option to purchase for $1 by Reading's bank, Meridian Bank. This option was explained in Reading's Form 315 application. [Adams Ex. 28 at 7; Adams Ex. 29; Parker Testimony, Tr. 800:8 – 801:25] Second, due to the garnishment, Dr. Aurandt did not receive any Reading stock under his own name. Rather, Dr. and Mrs. Aurandt, as tenants by the entireties, received 17,537 shares and STV Reading, Inc. received 17,674 shares. [Adams Ex. 24, certificates 2A and 29A; Parker Testimony, Tr. 672:1-23, 701:20-703:1][11]

39. Like the Meridian Bank option, the garnishment issue was explained in Reading's Form 315 application. [Adams Ex. 28 at Ex. 4; Parker Testimony, Tr. 885:3-886:20][12] Parker testified that he held back 13.98% of Reading's stock that

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[11] On December 31, 1991, Dr. Aurandt, as trustee, received an additional certificate for 6,331 shares. [Adams Ex. 24, certificate 22A]

[12] Adams attempts to suggest that Aurandt's creditors, listed in Adams Ex. 28 at Ex. 4, had already been issued the 13.98% of garnished stock. Adams Brief at 110-11. While those creditors did receive some Reading stock in the initial

(footnote continues)

had been earmarked for Dr. Aurandt pending the filing and grant of a long-form application so that any court-ordered transfer of stock from Dr. Aurandt to his creditors would not cause an unapproved transfer of control.[13] In addition, the long-form approval would give Reading the ability to raise money for a tower relocation by issuing stock to new investors. [Parker Testimony, Tr. 697:14-702:8] Reading's ownership reports dated April 9, 1992 and March 29, 1994 show that the garnished stock continued to be withheld by Reading, but ultimately Dr. and Mrs. Aurandt received 46,427 shares (11.07%) of Reading's stock, apart from the STV Reading, Inc. stock. [Reading Ex. 11, Ownership Report dated 4-9-92 at p. 3 and Ex. 2; Reading Ex. 11, Ownership Report dated 3-29-94 at 15][14]

40. Neither Adams nor the Bureau show that Reading was required to disclose the issuance of stock on October 15, 1991. Parker testified that he did not recall any discussion with Reading's communications counsel about any need to make such a disclosure. [Parker Testimony, Tr. 922:17-923:5] The only location on

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distribution, that was separate from the 13.98% interest described in the application and held back by the company. [Parker Testimony, Tr. 702:3-8]

[13] At the same time, Dr. Aurandt was asking the corporation to issue his stock to him and his wife jointly, which would make it more difficult for the creditors to obtain the stock. [Parker Testimony, Tr. 803:5-804:3]

[14] Adams claims that the garnishment was a pretext for seeking after-the-fact approval of a greater than 50% transfer of control. Adams Brief at 111. If that were the case, there would have been no need to continue the supposed pretext in Reading's post-consummation ownership report. [See Reading Ex. 11, Ownership Report dated 4-9-92 at p. 3 and Ex. 2]

FCC Form 315 that references stock ownership of the licensee is the table that asks for "Licensee's Total Shares Outstanding/Before Transfer" and "Licensee's Total Shares Outstanding/After Transfer," which Reading indicated were 50,000 and 419,038, respectively. [Adams Ex. 28 at 1] The Bureau interprets the first answer as a claim "that 50,000 shares were currently outstanding." Bureau Brief at 79. However, that is not what the form says, and it is reasonable to interpret the form as requesting the applicant to disclose the number of shares outstanding at the beginning of the process of coming out of bankruptcy.

41. Significantly, the application contained a contrary indication about the amount of outstanding stock. On page 7 of the application, Reading stated: "Meridian Bank holds an option, which it may exercise at will, to purchase 26,190 shares (6.25%) of Reading's stock from Partel, Inc. for one dollar ($1)." [Adams Ex. 28 at 7] Clearly, if 50,000 shares were outstanding, 26,190 shares would not represent 6.25% of Reading's stock. (The 419,038 shares listed in the "After Transfer" column on the application – Adams Ex. 28 at 1 – would have to be outstanding in order for 26,190 shares to represent 6.25% of Reading's stock.) Accordingly, the application is at best ambiguous on the issue of outstanding shares.

42. The Form 315 application, in Exhibit 2, footnote 1, also stated that the previous Form 316 application granted by the Commission had not been consummated. [Adams Ex. 28 at Ex. 2, p. 2, note 1] However, in the context of a corporation emerging from bankruptcy, as opposed to a corporate stock sale

transaction, issuance of new stock is just one of many steps required for consummation. [Parker Testimony, Tr. 804:19-806:10, 882:6-887:8]

43. The record evidence suggests that Reading's communications counsel, Sidley & Austin, was not aware of the status of Reading's stock. For instance, on January 29, 1992, counsel filed a letter describing Partel, Inc. as "a proposed 29.69% stockholder of the transferee." [Adams Ex. 29 at 1]. At the same time, however, counsel provided additional information about the existing Meridian Bank option. [Id.] On February 7, 1992, Sidley & Austin filed a letter with the Commission stating that "if the foregoing application is granted, the stock ownership of Reading will be different from the stock ownership of Reading prior to bankruptcy. As referenced in Reading's application, in order to adequately finance the corporation, Reading will issue additional shares of stock to reflect the addition of several new shareholders." [Adams Ex. 30 at 1]

44. It is simply implausible that Sidley & Austin would knowingly mislead the Commission. The most logical explanation is that Sidley & Austin did not know the status of the stock and assumed that 50,000 shares remained outstanding, without delving into the contradictory information about the Meridian Bank option. This was reasonable, because Form 315 does not require a before-and-after showing of stock ownership as required by Form 316. [Compare Adams Ex. 21 with Adams Ex. 28] Instead, Sidley & Austin was focused on disclosing the garnishment matter involving 13.98% of Reading's stock, because that was what turned the transaction

from a short-form transaction into a long-form transaction. Reading then relied on Sidley & Austin's preparation of the Form 315.

45. The Bureau's conclusion that Reading "omitted material information" from its Form 315 application is unsupported by the underlying facts or by any precedent. Bureau Brief at 76. In the context of an application for consent to transfer control from a debtor-in-possession to a newly reorganized company, it was reasonable to provide the original number (50,000) of shares outstanding in the "Before Transfer" category. [Adams Ex. 28 at 1] Reading cannot be penalized for not providing information that is not required with ascertainable certainty. See Trinity Broadcasting of Florida, Inc., 211 F.3d 618 (D.C. Cir. 2000). This portion of the application form was open to varying interpretations in the unusual circumstances presented here.

46. Likewise, Reading cannot be penalized for the subsequent letters from Sidley & Austin, which implicitly suggested that new stock had not been issued. [Adams Ex. 29 at 2; Adams Ex. 30 at 1] There is no basis for concluding that Sidley & Austin would knowingly mislead the Commission. The most reasonable conclusion is that Sidley & Austin incorrectly assumed that no new stock had been issued and that Sidley & Austin's letters reflect that assumption. However, this does not provide a basis for holding that Reading deliberately withheld material information from the Commission. Rather, the evidence strongly suggests that Reading and its counsel never focused on the conflicting information about stock ownership and Reading relied on Sidley & Austin's preparation of the application on

FCC Form 315. The conflicting information in the application, which both Adams and the Bureau fail to note, negates any inference of an intent to deceive the Commission.

7. Reading's Errors In Listing Officers And Directors Were Inadvertent.

47. Both Adams and the Bureau criticize Reading for erring in its reporting of its officers and directors, as stated in Reading Ex. 14. However, the evidence shows no basis for inferring any intent to deceive by Reading. Rather, the evidence suggests Reading's communications counsel, Sidley & Austin, prepared Reading's November 13, 1991 FCC Form 315 application by using the same listing of officers and directors that appeared in Reading's annual ownership report dated march 28, 1991. [See Reading Ex. 11, Ownership Report dated March 28, 1991, Reading Ex. 14 and Reading Ex. 46, Attachment F at F8-F11] The same listing was used in Reading's post-consummation ownership report dated April 9, 1992. [See Reading Ex. 11, Ownership Report dated April 9, 1992] However, the listing was corrected in Reading's annual ownership report dated March 29, 1994. [See Reading Ex. 11, Ownership Report dated March 29, 1994]

48. These types of mistakes are not uncommon and do not warrant any penalty against Reading in weighing its claim to a renewal expectancy. Indeed, Adams Exhibits 39 and 40 show how easy it is to make this type of mistake. Those exhibits were prepared by Adams' counsel, an experienced communications attorney who had full access to all relevant records. Nevertheless, those exhibits contained multiple errors in listing Reading's officers and directors at certain dates. [Adams

Ex. 39 and Adams Ex. 40; Tr. 876:9-879:6] This type of clerical error does not impact the station's viewers and is more than counterbalanced by a successful record in complying with the Commission's other rules and policies.

B. Misrepresentation / Lack Of Candor Issue Against Reading - Phase II.

49. Adams' principal contention regarding Reading's candor concerns the disclosures, in response to Question 7 in certain FCC applications filed by entities in which Micheal Parker held an interest (the "Applications"), concerning two prior Commission decisions, Religious Broadcasting Network, 3 FCC Rcd 4085 (Rev. Bd. 1988) [hereinafter Religious Broadcasting], and Mt. Baker Broadcasting Co., Inc., 3 FCC Rcd 4777 (1988) [hereinafter Mt. Baker] (these two decisions are jointly referred to herein as the "Previous Decisions"). In fact, the majority of Adams' Brief on this issue is dedicated to describing the Previous Decisions and arguing why Adams' interpretation of them is more accurate than those set forth in the Applications. Adams' effort, however, only serves to highlight that, at its heart, this issue amounts to nothing more than an disagreement between attorneys about a matter of legal interpretation -- hardly an appropriate subject for an allegation of misrepresentation / lack of candor. See Norcom Communications Corp, 15 FCC Rcd 1826, ¶¶ 20-21 (ALJ 1999) (reliance of the advice of counsel concerning the interpretation of FCC regulations would not support a finding of intent to deceive); Fox Television Stations, Inc., 10 FCC Rcd 8452, ¶ 119 (1995) (reliance on advice of counsel concerning the interpretation of and compliance with FCC foreign ownership regulations which was "particularly appropriate" and would not support

a finding of intent to deceive); Gary D. Terrell, 102 FCC 2d 787, ¶ 4 (Rev. Bd. 1985) ("Carelessness and a mistake of law are entirely different from an intent to deceive."). Moreover, despite the lengths to which Adams has gone to try to prove that its interpretation is correct, Adams' efforts are unsuccessful.

50. Regardless of which interpretation is better, however, Adams, which bears the burden of proof on this issue, has wholly failed to identify any evidence that the disclosures were drafted with an intent to deceive the Commission. E.g., Weyburn Broadcasting Ltd. v. FCC, 984 F.2d 1220, 1232 (D.C. Cir. 1993) (intent to deceive is an essential element of misrepresentation/lack of candor); David Ortiz Radio Corp. v. FCC, 941 F.2d 1253, 1258 (D.C. Cir. 1991) (same). Instead Adams posits only that the Commission should not accept either Mr. Parker's or Mr. Wadlow's testimony[15] that they believed the disclosures of the Previous Decisions to

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[15] Astonishingly, Adams repeatedly suggests that Mr. Wadlow, an experienced and well-respected communications attorney and former president of the Federal Communications Bar Association, was less than truthful in his testimony. (E.g., Adams' Brief, ¶¶ 377 ("Mr. Wadlow, an eminent FCC practitioner, claimed to be unaware of *Allegan County, supra,* the Commission's oft-cited 1980 decision which held precisely the opposite of what Mr. Wadlow claimed to have believed the law to be."), 379 ("Both Mr. Parker and Mr. Wadlow claimed to believe that, as of February, 1991, the real-party-in-interest issue had been resolved favorably to Mr. Parker, although Mr. Wadlow could not recall ever so advising Mr. Parker." (internal record citations omitted)), 390 ("It is inconceivable that Mr. Parker and Mr. Wadlow did not recognize that the Shaw situation completely undermined any shred of validity that the Wadlow Letter might have claimed."), 397 ("Mr. Wadlow professed not to recall any details concerning the Avalon proceeding. He also claimed no recollection of speaking with Mr. Parker after receipt of the Bureau Letter Inquiry. He also claimed not to recall whether Mr. Parker had ever asked him if the situation relating to Ms. Shaw's KCBI application affected Mr. Wadlow's advice concerning the effect of the *San Bernardino Proceeding* on Mr. Parker's qualifications." (internal record citations omitted)), 450 (". . . even in Mr. Parker and

(footnote continues)

be complete and accurate. That Adams disagrees with Parker and his counsel's advice concerning a question of legal interpretation, however, does not establish, by a preponderance of the evidence or otherwise, that the descriptions were intentionally deceptive or, for that matter, even that they were not accurate.

51. Adams' arguments, which depend in large part upon unsupported conjecture, hyperbole, mischaracterized testimony and evidence, and the claim that both Parker and Mr. Wadlow testified falsely, amount to nothing more than table pounding[16] and, as demonstrated below, are properly rejected.

1. The Applications.

52. With respect to the Applications, Adams takes exception to four points: (a) the lack of a reference to Religious Broadcasting in the KWBB(TV) ("West Coast United") Application and the LPTV Applications filed in 1989 (the West Coast United and the LPTV Applications are jointly referred to herein as the "1989 Applications"); (b) the negative response to Question 4 concerning prior adverse rulings; (c) the negative response to Question 7(d) concerning prior Commission proceedings which left "unresolved" character issues; and (d) the content of the Religious Broadcasting and Mt. Baker disclosures made in response to Question 7(a & b). As demonstrated below, Adams' arguments are baseless.

Mr. Wadlow really did believe . . ."), 451 ("Oddly, Mr. Wadlow and Mr. Parker professed not to recall anything at all about any conversations they had concerning the Shaw matter. How could that be?").

a. The 1989 Applications.

53. Specific to the 1989 Applications, Adams takes exception to the lack of a reference therein to the Religious Broadcasting case. (Adams' Brief, ¶¶ 311-312, 326-329, 421-423.) Adams argues that, because there is no evidence demonstrating why Religious Broadcasting was not mentioned, it can only be concluded that it was intentionally omitted in order to deceive the Commission. (Id.)

54. Contrary to Adams' conclusion, however, the absence of evidence concerning the preparation of the 1989 Applications does not establish intentional deception. In this, the Bureau concurs, concluding that "there is nothing in the record that suggests that the omission of any reference to the Religious Broadcasting Network decision in the March 1989 West Coast application was the result of a conscious decision by Parker." (Bureau's Brief, ¶ 133.)

55. In support of its argument, Adams relies on a number of faulty evidentiary recitations. Thus, Adams asserts that Parker's testimony is inconsistent with respect to the reason that Religious Broadcasting was not included in the 1989 Applications. (Adams' Brief, ¶¶ 311, 326-327.) Specifically, Adams claims that "Mr. Parker initially attributed this omission to some 'oversight' by Mr. Wadlow. RBI Exh. 46, p.6, n.1. . . . But in his live testimony, Mr. Parker abandoned the 'oversight' excuse. Instead, Mr. Parker characterized the omission of the *San Bernardino Proceeding* from the KWBB(TV) Application as a conscious

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[16] Adams appears to have taken to heart the adage that, when the facts are in your favor, pound the facts; when the law is in your favor, pound the law; and when

(footnote continues)

decision by Mr. Wadlow, to whom Mr. Parker supposedly deferred. Tr. 1941-1942." (Id., ¶¶ 326-327.)

56. Adams, however, wholly misstates Parker's testimony. Mr. Parker's actual testimony was that he did not know why Religious Broadcasting had not been included in the 1989 Applications. Parker believed it might have been either the result of an oversight by the Sidley Attorneys who prepared the Applications or the result of a conclusion by the Sidley attorneys that, because the decision was not yet final, no reference was required. In either case, Parker testified, he relied on them to determine what needed to be included in the application. [Parker Testimony, ¶ 11, n.1 (Reading Ex. 46), Tr. 1941:15-1942:20, 1949:21-1950:22] Specifically, on direct examination Parker testified with respect to the omission of Religious Broadcasting from the 1989 Applications: "I don't know whether this was an oversight or whether the Sidley attorneys believed at the time that the San Bernardino proceeding did not need to be mentioned. As noted above, they were aware of the San Bernardino case, so I relied upon them to decide what information to provide in the applications." [Parker Testimony, ¶ 11, n.1 (Reading Ex. 46). On cross-examination, Parker testified consistently:

> Mr. Cole: Can you tell me why Religious Broadcasting was not mentioned in this application?
>
> Mr. Parker: I believe it had not reached finality at that point.
>
> Q: In your view, was it appropriate not to mention cases that had not become final?

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neither the facts nor the law are in your favor, pound the table.

A: Again, I am not an attorney. I believe Mr. Wadlow, who was involved in the San Bernardino case representing another client, prepared the disclosure portion with regard to my entry. And if he didn't feel that it should be there, I relied upon him as I relied on my other counsel at various points. And so if he didn't put it there, it was because he didn't feel that was the case, and I took his advice.

[Parker Testimony, Tr. 1941:15-1942:3] A few minutes later, Parker further testified:

Mr. Cole: And we've already established this exhibit does not contain any reference to Religious Broadcasting of San Bernardino case.

My question to you now, Mr. Parker, is -- in light of the language in question seven on the form that we just looked at -- how could you fail to include any reference to the Religious Broadcasting case in the San Francisco application?

Mr. Parker: I think I already answered that question.

Mr. Wadlow was involved in that case and in fact represented another party. He represented West Coast. And he didn't add it here.

Q: Did it strike you as strange that this San Francisco application did not include any reference at all to Religious Broadcasting?

A: Did it strike me as strange, no. But I believe his philosophy was that it wasn't final yet and therefore wasn't a final decision, and it wasn't included.

Q: Did you ask anybody why no reference to Religious Broadcasting was included in this application?

A: Again, I didn't sign this application. I think I participated in putting it together, but I don't recall ever having a discussion.

Q: So you never suggested to anybody that Religious Broadcasting should be referenced in the application?

A: No. Likewise, I didn't recommend that it wasn't. I don't recall.

[Parker Testimony, Tr. 1949:21-1950:22]

57. Notably, the Bureau, in concluding that the omission of Religious Broadcasting from the 1989 Applications was not the result of intentional deception, found that "the Religious Broadcasting Network decision did not even merit mentioning inasmuch as the denial of the SBBLP application was not final as of March 1989." (Bureau's Brief, ¶ 133.)

58. Not only does Adams misstate the substance of Parker's testimony regarding the omission of Religious Broadcasting from the 1989 Applications, Adams also suggests that Parker's claim to have relied on counsel's preparation of those applications was not supported by the testimony of his counsel. (Adams' Brief, ¶¶ 328, 423.) Specifically, Adams asserts that "Mr. Wadlow did not corroborate Mr. Parker's testimony. Far from claiming credit for authorship, Mr. Wadlow testified that he could not recall even having reviewed the 'disclosures'. Tr. 1858." (Id., ¶ 328.) Adams further states that "[w]hile [Mr. Parker] claimed to have relied on counsel in the preparation of these applications, his then-counsel did not corroborate this testimony." (Id., ¶ 423.) In these assertions, Adams once again misstates the actual testimony.

59. Thus, Mr. Wadlow actually testified:

Mr. Hutton: Would you have reviewed this application before it was filed?

> Mr. Wadlow: Well, Mr. [Andrle], who signed the transmittal letter, was an associate working with me on communications matters, generally. It is -- I may very well have reviewed it. I wouldn't -- I wouldn't necessarily -- I can't be absolutely certain that I did because Mr. [Andrle] may have filed things that I

didn't review, which would not have been uncommon for him to have me review something he filed.

[Wadlow Testimony, Tr. 1858:14-22] Mr. Wadlow further testified with respect to the preparation of the West Coast United application exhibit that omitted Religious Broadcasting:

> Mr. Shook: Well, let me see if I can narrow things here a bit. So far as you recall, you personally did not have anything to do with the preparation of this exhibit?
>
> Mr. Wadlow: It is most likely that Mr. [Andrle] prepared it and it is most likely that I reviewed it before it was filed. But I am not certain of that. I mean, in the normal course of things, Mr. [Andrle], as an associate would have drafted it and I would have had occasion to review it.

[Wadlow Testimony, Tr. 1864:21-1865:3]

60. Thus, contrary to Adams' argument that the absence of evidence concerning the omission of Religious Broadcasting compels the conclusion that it was intentionally omitted to deceive the Commission, the evidence actually shows that: the disclosure exhibit in question was prepared by the Sidley Attorneys, most likely William Andrle and most likely reviewed by Mr. Wadlow; Parker did not know why Religious Broadcasting was omitted but believed it might have been either the result of an oversight by the Sidley Attorneys or because they believed that, because it was not yet final, no reference was required; and that, in either case, Parker relied on the Sidley Attorneys to determine what needed to be included in the application. This evidence does not support a conclusion of intentional deception with respect to the preparation of the 1989 Applications.

61. That having been said, Reading continues to maintain that, because they are more than ten years old, the 1989 Applications should not be considered, except for background information purposes only. See Policy Regarding Character Qualifications In Broadcast Licensing, 102 FCC 2d 1179, 1229 (1986) (subsequent history omitted) ("as a general matter conduct which has occurred and was or should have been discovered by the Commission, due to information within its control, prior to the current license term should not be considered, and that, even as to consideration of past conduct indicating 'a flagrant disregard of the Commission's regulations and policies,' a ten year limitation should apply").

b. Question 4.

62. Question 4 of the Applications asks:

> Has any adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination?

In every case, the applicant responded "no." [WHRC-TV, Norwell, Massachusetts (the "Norwell Application") (Reading Ex. 46, Attachment E at E22); WTVE(TV), Reading, Pennsylvania (the "Reading Application") (Reading Ex. 46, Attachment F at F7); KVMD(TV), Twentynine Palms, California (the "Twentynine Palms Application") (Reading Ex. 46, Attachment G at G7); KCBI(TV), Dallas, Texas (BALIB-9208100M) (the "Dallas Application") (Reading Ex. 46, Attachment H at H7); West Coast United Application (Reading Ex. 46, Attachment I at I7)]

63. Adams takes exception to the negative answer to Question 4 on the ground that it fails to account for Religious Broadcasting. (Adams' Brief, ¶¶ 281, 286, 291, 295, 299, 303, 313-315, 435.) As the Bureau confirms, however, Question 4 "focuses on adverse findings or final actions or consent decrees that result from *non*-FCC proceedings." (Bureau's Brief, ¶ 130 (emphasis original).)[17] Because Religious Broadcasting is an FCC decision, it does not fall within the scope of Question 4 and, therefore, contrary to Adams' contention, does not compel an affirmative answer to Question 4. "Because Question 4 should be interpreted as addressing non-FCC adjudicated misconduct," the asserted failure to identify an FCC adjudication "should not form the predicate for a misrepresentation or lack of candor." (See Bureau's Brief, ¶ 130.)[18]

64. Because Question 4 only requires an applicant to identify *non*-FCC adverse findings or final actions or consent decrees and because Adams has not identified (and, because none exist, cannot identify) any such *non*-FCC adverse findings or final actions or consent decrees that would have required an affirmative

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[17] This distinction between FCC misconduct and non-FCC misconduct derives from the Commission's seminal decision in Policy Regarding Character Qualifications in Broadcasting Licensing, 102 FCC 2d 1179 (1986), modified, 1 FCC Rcd 421 (1986), 5 FCC Rcd 3252 (1990), 6 FCC Rcd 3448 (1991), 7 FCC Rcd 6564 (1992), wherein the Commission identified the specific types of non-FCC misconduct that are described in Question 4. See 102 FCC 2d at 1193-1208.

[18] Even if this interpretation were wrong, the applications did disclose the Religious Broadcasting decision in the responses to Question 7, thereby negating any inference of intentional deception. The only exception was the 1989 Applications which were prepared by the Sidley Attorneys, upon whose professional skill and judgment Parker reasonably relied to include all the information required.

response to the Applications' Question 4, the negative response to Question 4 is accurate.

c. Question 7(d).

65. Question 7(d) of the Applications asks:

> Has the applicant or any party to this application had any interest in or connection with the following: (d) an application in any Commission proceeding which left unresolved character issues against the applicant?

In every case, the applicant responded "no." [Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10); West Coast United Application (Reading Ex. 46, Attachment I at I9)]

66. Adams takes exception to the negative response to Question 7(d) on the ground that it fails to account for Religious Broadcasting. (Adams' Brief, ¶ 282, 287, 292, 296, 300, 304, 428, 433.) Contrary to Adams' interpretation of the outcome of that case, however, Religious Broadcasting did not leave any "unresolved character issues against [SBB];" accordingly the negative answer to Question 7(d) was correct and Adams' exception to that answer is not well taken. Specifically, the Review Board's decision affirming the ALJ's denial of integration credit to SBB stemming from the real-party-in-interest issue *did finally resolve* that issue when SBB elected not to appeal and the Review Board subsequently approved the settlement. See 47 C.F.R. § 1.276; see also SL Communications, Inc. v. FCC, 168 F.3d 1354, 1359 (D.C. Cir. 1999).